

EXHIBIT A

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8 Attorneys for Defendants
9

10 **UNITED STATES DISTRICT COURT**
11 **WESTERN DISTRICT OF WASHINGTON**

12 AMAZON.COM, INC., *et al.*,

13 Plaintiffs,

14 v.

15 NGULLEN ALEJANDRO RIVERA, *et*
16 *al.*,

17 Defendants.
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Case No. 4:17-cv-05058-TOR

**INITIAL DISCLOSURES OF
NGULLEN ALEJANDRO RIVERA
& NGS ICOMMERCE
ENTERPRISES**

COMES NOW, Defendants NGULLEN ALEJANDRO RIVERA (“*Mr. Rivera*”) and NGS ICOMMERCE ENTERPRISES (“*NGSI*”), and hereby provide their Initial Disclosures pursuant to Federal Rule of Civil Procedure 26(a). Defendants’ disclosures are based upon good faith efforts to identify and disclose the requisite information pursuant to the federal and local rules, as well as any standing Order, at this time in the above-captioned litigation. Defendants reserve all rights to update and supplement these disclosures as new information is brought to light, or to withhold particular information, where withholding is permitted under the applicable rules, as this proceeding moves forward.

A. Identification of Individuals Likely to be in Possession of Discoverable Information Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(i)

Individuals likely to have discoverable information relevant to this matter include the following, and contact information as well as the subject of the information the individual is likely to possess is indicated where it is known to Defendants:

- Ngullen Alejandro Rivera, c/o Lexero Law. Mr. Rivera has knowledge of NGSI and its business practices.
- Designated Representative of NGS ICommerce Representatives, c/o Lexero Law. A designated representative is likely to have knowledge of NGSI and its business practices.
- All Individuals Set Forth in Plaintiff’s Initial Disclosures

B. Disclosure of Contents and Location of Documents Supporting Defendants’ Claims or Affirmative Defenses Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(ii)

Documents in Defendants’ possession, custody, or control and existing at Defendants’ place of business that may be used to support Defendants’ claims or affirmative defenses include:

- Documents containing general information about the business operations of Defendants’ business.

- Documents related to Defendants' sale of goods.
- Various contracts and communications with third parties related to the sale of goods.
- E-mail, facsimile, and/or other communications related to the sale of goods.
- All documents filed with the Court in the above-captioned case.
- Relevant expert reports.
- All documents produced by the parties or third parties in the instant case.
- All deposition transcripts and exhibits in the instant case.

C. Disclosure of Computation of Monetary Damages Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iii)

Defendants do not, at this time in the litigation, claim or seek monetary damages. However, Defendants reserve the right to seek costs and attorney's fees incurred in the defense of this action, via any legal manner. Defendants may plead counterclaims, and expressly reserve the right to later seek monetary damages, attorney's fees, or the cost of reasonable litigation expenses.

D. Identification of Insurers Potentially Required to Defend and Indemnify Pursuant to Fed. R. Civ. P. 26(a)(1)(A)(iv)

Defendants do not have an insurance policy under which they might potentially be covered in this action.

Respectfully submitted,

/s/ Eric J. Menhart*

Eric J. Menhart, Esq.

**Admitted Pro Hac Vice*

/s/ Eric R. Draluck

Eric R. Draluck, Esq.

Attorney to be Noticed

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via email on May 1, 2018.

/s/ Eric J. Menhart
Eric J. Menhart, Esq.

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, INC., a Delaware corporation,
and OTTER PRODUCTS, LLC, a Colorado
limited liability company,

Plaintiffs,

v.

NGULLEN ALEJANDRO RIVERA, an
individual, NGS ICOMMERCE ENTERPRISES
CORP., a Florida Corporation, and JOHN DOES
1-10,

Defendants.

No. 2:18-cv-00350-RSM

PLAINTIFF AMAZON.COM,
INC.'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
TO DEFENDANT NGULLEN
ALEJANDRO RIVERA

Pursuant to Federal Rules of Civil Procedure 26, 33 and 34, Plaintiff Amazon.com, Inc. ("Amazon") hereby requests that Defendant Ngullen Alejandro Rivera ("Rivera") answer and respond to the following First Set of Interrogatories and Requests for Production of Documents ("First Discovery Requests") and produce for inspection and copying the following described documents within thirty (30) days of the date of the service of these discovery requests upon you. All responses and productions shall be made at the offices of Davis Wright Tremaine LLP, 1201 Third Avenue, Suite 2200, Seattle, WA 98101-3045 unless otherwise stipulated to by Amazon's counsel of record.

INSTRUCTIONS

1. In answering these interrogatories, furnish all information available to you regardless of whether they were obtained directly by you, your attorneys, through your agents, assigns, or representatives, or by anyone acting on your or their behalf.

2. If you cannot answer or respond to these interrogatories in full, answer to the extent possible, specify the reasons for your inability to answer, and state whatever information, knowledge, or belief you have concerning the unanswered, including the general subject matter of the unproduced portion.

3. For documents produced in response to these requests, you must: a) produce documents grouped separately for each production request; b) for each document produced, identify the production request(s) to which that document is responsive; or c) produce such documents as kept in the usual course of business, along with copies of the folders or other containers in which the documents are kept.

4. Produce all non-identical copies of responsive documents, including drafts and copies upon which notes have been made.

5. Please mark each page or sheet you produce with an identification of the defendant and consecutive document control (Bates) numbers.

6. Documents originating in paper form shall be copied as they are kept in the normal course of business, and any titles, labels, or other descriptions on any box, folder, binder, file cabinet, or other container shall be copied as well. Documents originating in paper format should be scanned as images at the time of copying, with optical character recognition ("OCR"). Scanned images shall be produced in the same load format as electronically stored information, as set forth below.

7. Electronically stored information ("ESI") shall be converted to images and produced, together with requested metadata, in the form provided in *Exhibit A* to these discovery requests. Spreadsheets (e.g. Excel documents) shall be produced in native file format. ESI in other formats shall be identified prior to production to permit the parties to

1 confer regarding production format.

2 8. If you object to answering any interrogatory or request for production, in whole
3 or in part, state your objection and the basis for it. If you are aware of any document or
4 categories of documents otherwise responsive to a discovery request you are withholding on
5 the basis of one or more of your objections, you must so indicate.

6 9. Where a claim of privilege is asserted in objecting to an interrogatory or request
7 for production, and a complete answer or response is not provided on the basis of such
8 assertion, (1) identify the nature of each privilege (including work product) that is being
9 claimed; and (2) provide the following information:

10 a. For documents: (i) the type of document, e.g., letter or memorandum; (ii)
11 the general subject matter of the document; (iii) the date of the document; (iv) such other
12 information as is sufficient to identify the document, including, where appropriate, the author
13 of the document, the addressees of the document, and any other recipients shown in the
14 document, and, where not apparent, the relationship of the author, addressees, and recipients to
15 each other; and (v) its present or last known location or custodian. If any such document was
16 but no longer is in your possession or subject to your control, state what disposition was made
17 of it and the reason for such disposition.

18 b. For oral communications: (i) the name of the person making the
19 communication and the names of persons present while the communication was made and,
20 where not apparent, the relationship of the persons present to the person making the
21 communication; (ii) the date and place of communication; and (iii) the general subject matter of
22 the communication.

23 10. These requests are continuing in nature. You are required to promptly
24 supplement your disclosures and responses upon learning that your prior disclosure or response
25 was incomplete or incorrect in any way. If additional information is discovered between the
26 time of making these answers or of providing these responses and the time of trial, these
27 discovery requests are directed to that information. If such information is not furnished,

Amazon will move at the time of trial to exclude from evidence any information requested, not furnished, and which prejudice Amazon's case.

DEFINITIONS

Any term not defined herein shall have the meanings given to them in common usage within the context in which they are used.

1. **"You," "your," or "Defendant"** refers to Defendant Ngullen Alejandro Rivera in all capacities, as well as your businesses, attorneys, consultants, experts, investigators, agents, employees, independent contractors, accountants, other persons under your supervision, direction, or control, or persons acting on their behalf. These terms shall not be narrowly construed as conjunctive or disjunctive in any particular context so as to exclude any information otherwise within the scope of a particular discovery request.

2. **"Complaint"** means the Complaint for Injunctive and Related Relief filed in the above-captioned action on March 3, 2018. (Doc. #1).

3. **"Amazon Seller Account"** means any account that is held at Amazon for the purpose of advertising, marketing, selling, and/or distributing products through Amazon's website.

4. **"Cases & More"** means the Amazon Seller Account operating under the name "Cases & More LLC."

5. **"ASIN"** means the Amazon Standard Identification Number used to uniquely identify a product in Amazon's catalog.

6. **"OTTERBOX Trademarks"** means the federally registered trademarks identified in Paragraphs 23 and 24 of the Complaint.

7. **"Otter Products"** means Otter Products, LLC or its affiliates.

8. **"Otter Products Case"** means any mobile device case that is manufactured or sold by Otter Products, including without limitation mobile device case bearing one or more OTTERBOX Trademarks.

9. **"Counterfeit Otter Products Case"** means any product that imitates or is

1 otherwise passed off as a genuine Otter Products Case as determined through the totality of
2 circumstances, including without limitation products bearing or purporting to bear one or more
3 OTTERBOX Trademarks that has not been manufactured by, or licensed for manufacture by,
4 Otter Products.

5 10. “**And**” and “**or**” are to be construed either disjunctively or conjunctively as
6 necessary to bring within the scope of these discovery requests all responses, disclosures, or
7 information that is otherwise responsive to a particular discovery request. These terms shall
8 not be narrowly construed as conjunctive or disjunctive in any particular context so as to
9 exclude any information otherwise within the scope of a particular discovery request.

10 11. “**Communication**” and “**Correspondence**” may be used interchangeably and
11 mean any transfer of information, ideas, opinion or thought by any means, at any time or place,
12 under any circumstance, and is not limited to transfers between persons, but includes other
13 transfers such as records and memoranda to file, including, data entered into a computer-stored
14 or readable file.

15 12. “**Document**” has the same meaning as in Fed. R. Civ. P. 34, including without
16 limitation electronic or computerized data. A draft or non-identical copy is a separate
17 document within the meaning of this term.

18 13. “**Financial Account**” means any account held by you at a bank, savings and
19 loan association, payment processor, PayPal, Western Union, merchant account provider,
20 payment provider, third-party payment processor, credit card company (e.g., MasterCard and
21 Visa), or any other entity that provides investment advice, financial services, or escrow
22 services.

23 14. “**Identify**” means:

24 (i) With respect to documents: to provide separate identification of the date
25 of each document, its title, its format, the authors and recipients, its location, and its general
26 contents. In lieu of identifying a document, you may attach a copy of such document(s) to your
27 answers to these discovery requests.

(ii) With respect to communications: to provide the date of each communication; a description of its contents; the means of communication; the person who initiated the communication and each other person who was a participant or recipient; any document reflecting or referring to the communication; and its precise words. For communications in a document or other tangible form, you may attach a copy of such document to your answers to these discovery requests in lieu of identifying the communications.

(iii) With respect to persons: to provide the full name of the person along with his or her present or last known home address, home or mobile telephone number, email address, employer, work address, work telephone number, and the location or timing of regular travel to the United States.

(iv) With respect to a financial account: the institution at which the account is held, the account number, the date the account was opened, and the names of each person that owns or otherwise controls the account.

(v) With respect to anything else: to provide all characteristics that describe a particular thing, place, activity, event, or instance for which an identification is sought, including the date, persons involved, and substance thereof.

15. **“Person”** shall include, in the plural as well as singular, any natural person, firm, association, partnership, joint venture, corporation, municipal or government entity or agency, political subdivision, group, trust, or other kind of business or public organization, unless the context otherwise indicates.

16. **“Possession, custody, or control”** includes the joint or several possession, custody or control not only by the persons to whom these requests are addressed, but also the joint and several possession, custody or control by each or any other person acting or purporting to act on behalf of the person, whether an employee, attorney, consultant, expert, investigator, agent, employee, independent contractor, accountant, or otherwise.

17. **“Relating to”** means regarding, constituting, defining, containing, embodying,

describing, discussing, reflecting, identifying, stating, concerning, referring to, dealing with, or in any way pertaining to.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person who provided information used in answering and responding to these Discovery Requests, and state the information provided by that person.

ANSWER:

INTERROGATORY NO. 2: Identify each person with whom you have communicated about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.

ANSWER:

INTERROGATORY NO. 3: Identify each email account you have used to communicate about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.

ANSWER:

INTERROGATORY NO. 4: Identify each phone number (by carrier and number) you have used to communicate about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.

ANSWER:

INTERROGATORY NO. 5: Identify each business entity owned or controlled by you, whether in whole or in part, directly or indirectly, and describe each entity's involvement, if any, in the advertising, marketing, sale, and/or distribution of products on Amazon's website during the last five years.

1 **ANSWER:**

2
3 **INTERROGATORY NO. 6:** For each business entity identified in your Answer to
4 Interrogatory No. 5, identify all of that entity's owners (by overall share), managers and
5 employees during the last five years.

6 **ANSWER:**

7
8 **INTERROGATORY NO. 7:** For each business entity identified in your Answer to
9 Interrogatory No. 5, identify each physical location (e.g., street address) owned, rented, leased
10 or otherwise occupied for the purpose of conducting that entity's business operations.

11 **ANSWER:**

12
13 **INTERROGATORY NO. 8:** Identify each Amazon Seller Account (by account name
14 and seller ID) you have ever used, accessed, owned, or otherwise controlled.

15 **ANSWER:**

16
17 **INTERROGATORY NO. 9:** Identify each person who created, used, or accessed the
18 Cases & More account, including the person's full name, employer, job title, and contact
19 information.

20 **ANSWER:**

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22 **INTERROGATORY NO. 10:** Identify each website you use or have ever used to
23 advertise, market, sell, and/or distribute Otter Products Cases or Counterfeit Otter Products
24 Cases.

25 **ANSWER:**

1 **INTERROGATORY NO. 11:** Identify each acquisition by you of Otter Products
2 Cases or Counterfeit Otter Products Cases during the last five years, including without
3 limitation the full names, addresses, and contact information of the person(s) from whom they
4 were acquired; the date(s) they were acquired; the items acquired; the quantity acquired; the
5 price paid; and the serial numbers or other identifying information associated with the
6 acquisition.

7 **ANSWER:**

8
9 **INTERROGATORY NO. 12:** Identify each sale by you of Otter Products Cases or
10 Counterfeit Otter Products Cases during the last five years, including without limitation the full
11 names, addresses, and contact information of the person(s) to whom they were sold; the date(s)
12 they were sold; the items sold; the quantity sold; the price at which they were sold; the ASIN
13 under which they were sold; the order numbers; and the serial numbers or other identifying
14 information associated with the sale.

15 **ANSWER:**

16
17 **INTERROGATORY NO. 13:** Identify all Otter Products Cases or Counterfeit Otter
18 Products Cases which remain in your possession or control, including their current physical
19 location, items, quantity, and serial numbers or other identifying information.

20 **ANSWER:**

21
22 **INTERROGATORY NO. 14:** Identify each complaint received by you about any
23 Otter Products Cases or Counterfeit Otter Products Cases you sold during the last five years,
24 including without limitation the full names, addresses, and contact information of the person(s)
25 making the complaint; the date(s) of the complaint; the substance of the complaint; your
26 response to the complaint (if any); and all information about the item(s) which are the subject
27

1 of the complaint, including the date the item was sold, quantity, price, ASIN, order numbers,
2 and serial numbers or other identifying information associated with the sale.

3 **ANSWER:**

4
5 **INTERROGATORY NO. 15:** Identify each financial account (by institution, account
6 number and account owner) into which you have received, deposited, or transferred any funds
7 derived from the manufacture or sale of Otter Products Cases or Counterfeit Otter Products
8 Cases during the last five years.

9 **ANSWER:**

10
11 **INTERROGATORY NO. 16:** Identify your total sales (by dollar) of Otter Products
12 Cases or Counterfeit Otter Products Cases during the last five years, and describe the basis for
13 and calculation method used to compute those sales totals.

14 **ANSWER:**

15
16 **INTERROGATORY NO. 17:** Identify your profits earned from the sale of Otter
17 Products Cases or Counterfeit Otter Products Cases during the last five years, and describe the
18 basis for and calculation method used to compute those profits.

19 **ANSWER:**

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21 **INTERROGATORY NO. 18:** Identify and describe all civil or criminal actions,
22 lawsuits, arbitrations, mediations, or other adjudicatory proceedings or regulatory enforcement
23 actions or investigations, including any request from a State Attorney General's office, to
24 which you have been a party or provided testimony or evidence during the last ten (10) years
25 involving the advertising, marketing, sale, distribution, import, and/or manufacture of an
26 allegedly counterfeit, unlicensed or non-genuine product. Include in your description (i) the
27 parties to the lawsuit, (ii) the court, (iii) the caption and case number, (iv) the nature of the

claims asserted, and (v) the resolution of the case (i.e., still pending, verdict, judgment granted, etc. or its current procedural stage).

ANSWER:

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: Produce all documents reviewed, referred to, or relied upon in preparing your responses to any of these Discovery Requests.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: Produce all communications with each person identified in your Answer to Interrogatory No. 2 relating to Otter Products Cases or Counterfeit Otter Products Cases.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: Produce all communications relating to Otter Products Cases or Counterfeit Otter Products Cases from the email account(s) identified in your Answer to Interrogatory No. 3.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: Produce all text or voice messages relating to Otter Products Cases or Counterfeit Otter Products Cases from the phone numbers identified in your Answer to Interrogatory No. 4.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: Produce all documents and communications concerning the establishment, formation, registration, and ownership of any entity identified in response to the Interrogatory No. 5, including without limitation (a) articles

1 of incorporation, bylaws, and any other formational or organizational documents; (b)
2 communications with any government agency regarding formation or registration; and (c)
3 documents reflecting shares issued, owners, and ownership interests held.

4 **RESPONSE:**

5
6 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents—including without
7 limitation contracts, agreements, licenses, invoices, bills, purchase orders, receipts, shipping
8 manifests, payments, internal notes, and correspondence between you and any person—that
9 show, refer, relate to, or memorialize, any purchase, acquisition, import, and/or manufacture by
10 you of Otter Products Cases or Counterfeit Otter Products Cases.

11 **RESPONSE:**

12
13 **REQUEST FOR PRODUCTION NO. 7:** Produce all communications between you
14 and any person who has provided or offered to provide you (in any manner, including without
15 limitation, sale, manufacture, or trade) Otter Products Cases or Counterfeit Otter Products
16 Cases.

17 **RESPONSE:**

18
19 **REQUEST FOR PRODUCTION NO. 8:** Produce all policies, procedures, training
20 manuals, or other documents in effect at any time during the last five years, that govern or
21 governed your acquisition, advertising, marketing, sale, distribution, import, and/or
22 manufacture of Otter Products Cases or Counterfeit Otter Products Cases, including without
23 limitation all policies, procedures, training manuals, or other documents whose purpose or
24 effect is to ensure the products you acquired bearing OTTERBOX Trademarks were properly
25 manufactured by, or licensed for manufacture by, Otter Products.

26 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 9:** Produce all documents—including without
2 limitation contracts, agreements, licenses, invoices, bills, purchase orders, receipts, shipping
3 manifests, payments, internal notes, and correspondence between you and any person—that
4 show, refer, relate to, or memorialize, any sale by you of Otter Products Cases or Counterfeit
5 Otter Products Cases during the last five years.

6 **RESPONSE:**

7
8 **REQUEST FOR PRODUCTION NO. 10:** Produce all documents—including
9 without limitation contracts, agreements, licenses, invoices, bills, purchase orders, receipts,
10 shipping manifests, payments, internal notes, and correspondence between you and any
11 person—that show, refer, relate to, or memorialize, any complaint you received relating to
12 Otter Products Cases or Counterfeit Otter Products Cases you sold during the last five years.

13 **RESPONSE:**

14
15 **REQUEST FOR PRODUCTION NO. 11:** Produce all periodic statements during the
16 last five years from any Financial Account into which any proceeds from the sale of Otter
17 Products Cases or Counterfeit Otter Products Cases were deposited, including without
18 limitation documents sufficient to show each account's balance, balance history, deposits,
19 transfers, withdrawals, and checks or wire payments drawn on or deposited to the account

20 **RESPONSE:**

21
22 **REQUEST FOR PRODUCTION NO. 12:** Produce all documents and
23 communications relating to Cases & More.

24 **RESPONSE:**

1 **REQUEST FOR PRODUCTION NO. 13:** Produce all documents and
2 communications relating to any Amazon Seller Account through which you have marketed or
3 sold Otter Products Cases or Counterfeit Otter Products Cases during the last five years.

4 **RESPONSE:**

5
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7 **REQUEST FOR PRODUCTION NO. 14:** Produce all communications with Amazon
8 during the last five years relating to any aspect of your sale of goods on Amazon.com.

9 **RESPONSE:**

10
11 **REQUEST FOR PRODUCTION NO. 15:** Produce all agreements or contracts you
12 have with Amazon that were in effect at any time during the last five years.

13 **RESPONSE:**

14
15 **REQUEST FOR PRODUCTION NO. 16:** Produce all communications with Otter
16 Products during the last five years.

17 **RESPONSE:**

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19 **REQUEST FOR PRODUCTION NO. 17:** Produce all documents and
20 communications during the last five years relating to any OTTERBOX Trademark.

21 **RESPONSE:**

22
23 **REQUEST FOR PRODUCTION NO. 18:** Produce all marketing materials (whether
24 in hard copy or electronic form) you created during the last five years using OTTERBOX
25 Trademarks, or that in any way reference Otter Products Cases or Counterfeit Otter Products
26 Cases.

27 **RESPONSE:**

REQUEST FOR PRODUCTION NO. 19: Produce all documents and communications relating to the following Amazon orders:

- a. Order ID 109-8189493-4792259 on July 23, 2015.
- b. Order ID 109-7490388-0111419 on November 10, 2015.
- c. Order ID 112-1568304-2261825 on December 24, 2015.
- d. Order ID 112-5240300-2574610 on January 23, 2016.
- e. Order ID 105-1725172-5037854 on February 27, 2016.
- f. Order ID 106-9842401-5951416 on July 13, 2016.
- g. Order ID 112-0354794-6716238 on July 14, 2016.
- h. Order ID 110-6184376-6789009 on July 16, 2016.
- i. Order ID 103-3540312-0997853 on July 27, 2016.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: Produce all documents and communications relating to any case or matter identified in your Answer to Interrogatory No. 18.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: Produce all notices (regardless of source) relating to the infringement or authenticity of any goods sold by you during the last five years.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: Produce all documents that support, refute, or otherwise relate to the claims and allegations in the Complaint.

RESPONSE:

1
2
3 DATED: May 22, 2018

4 By: /s/ Bonnie E. MacNaughton
5 Bonnie E. MacNaughton, WSBA #36110
6 James H. Wendell, WSBA #46489
7 James Harlan Corning, WSBA #45177
8 DAVIS WRIGHT TREMAINE LLP
9 1201 Third Avenue, Suite 2200
10 Seattle, Washington 98101-3045
11 Telephone: (206) 622-3150
12 Facsimile: (206) 757-7700
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Attorneys for Plaintiff Amazon

ATTORNEY'S CERTIFICATION

The undersigned attorneys for Defendants have read the foregoing Plaintiff Amazon's First Set of Interrogatories and Requests for Production and the answers, responses and any objections thereto, and confirm that the answers, responses and any objections thereto are in compliance with FRCP 26(g).

DATED this ____ day of _____, 2018.

Attorneys for Defendants

By: _____

VERIFICATION BY PARTY

COUNTRY OF _____)
) ss.
CITY OF _____)

_____, being first duly sworn, on oath deposes and says:

That s/he is a duly authorized representative of Ngullen Alejandro Rivera in the above-entitled matter, s/he has read the foregoing Plaintiff Amazon's First Set of Interrogatories and answers thereto, knows the contents thereof, and believes the same to be true and complete to the best of her/his knowledge and belief.

By: _____

Name: _____

Title: _____

SUBSCRIBED AND SWORN TO before me this ____ day of _____, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I caused a true and correct copy of the foregoing document to be served on the following in the manner indicated:

Eric Menhart	<input type="checkbox"/>	Messenger
Eric R. Draluck	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid
LEXERO LAW	<input type="checkbox"/>	Federal Express
316 F Street NE, Ste. 101	<input type="checkbox"/>	Facsimile
Washington, DC 20002	<input checked="" type="checkbox"/>	Email to:
Tel: (855) 453-9376		eric.menhart@lexero.com
		edraluck@gmail.com

*Counsel for Defendants Ngullen Alejandro
Rivera and NGS ICommerce Enterprises
Corp.*

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of May, 2018.

/s/ Bonnie E. MacNaughton

Bonnie E. MacNaughton

EXHIBIT A**Required Format for Document Production**

Documents originating in paper (or any document without extracted text), shall be converted to single page TIFFs (Tagged Image File Format) and include multi-page OCR and placed in an “OCR” folder. Documents that contain redactions shall have OCR for the content that remains after the redactions are applied to the TIFF.

Electronically stored information shall be converted to TIFF images. Images shall be single page TIFFs and placed in an “Images” Folder with an accompanying Opticon Load File (.OPT) in an “Opticon” Folder. TIFF specifications: 300 DPI, CCITT Group 4 Fax encoding, no gray scale, and JPGs for color images.

Documents originating in electronic form shall include extracted text in a “Text” Folder.

Natively produced spreadsheets shall be in a folder named “Native” and each spreadsheet shall be re-named to include a Bates Number and Confidentiality Designation if applicable. For all documents produced natively within the production TIFFs, provide a slip sheet to take the native’s place in the production.

The metadata fields listed below shall be produced in a .DAT Load File. Priority “1” indicates fields that must be supplied to render your production of metadata complete and accurate. Priority “2” indicates fields that we are requesting if available.

Field Name	Field Contents	Priority*
A_PRODBEGNO	Beginning Production Number as Bates Stamped	1
A_PRODENDNO	Ending Production Number as Bates Stamped	1
A_PRODATTBEG	Beginning Family Bates Production Number	1
A_PRODATTEND	Ending Family Bates Production Number	1
F_CUSTODIAN	Person or Data source from whom the document was collected. Format is (Last Name, First Name)	1

1	E_FROM	EMAIL - Sender of Message	1
2	E_TO	EMAIL - Recipient of Message	1
3	E_CC	EMAIL - Carbon Copy recipients of Message	1
4	E_BCC	EMAIL - Blind Carbon Copy recipients of Message	1
5	ED_RCVDATE	EMAIL - Received Date of Message – Format: MM/DD/YYYY	1
6	ED_RCVTIME	EMAIL - Received Time of Message	1
7	ED_SENTDATE	EMAIL - Sent Date of Message. Format: MM/DD/YYYY	1
8	ED_SENTTIME	EMAIL - Sent Time of Message	1
9	E_SUBJECT	EMAIL - Subject of Message	1
10	ED_MODDATE	Date File was last modified, taken from file properties. Format: MM/DD/YYYY	1
11	ED_MODTIME	Time File Last Modified, taken from file properties.	1
12	E_FILENAME	Original Native File Name (processing renames files to DOCID)	1
13	R_Designations	Confidentiality designation as burned on production image.	1
14	File Path	Processed file path to load native files into Relativity. This will be created by the processing vendor.	1
15	LINK_Extracted Text	Processed file path to load extracted Text/OCR (txt) files.	1
16	ED_UTC Offset	Time offset from GMT to indicate the local time zone.	1
17			
18	E_AUTHOR	Author of Native File Taken from File Properties.	2
19	R_PRODVOL	Production Volume Number	2
20	E_FILEEXT	Native File Extension. For example, .msg for Outlook email or .doc for a Word document.	2
21	E_FILEPATH	Original Native File Path	2
22	E_FILESIZE	File size in bytes	2

E_TITLE	Title of Native File Taken from File Properties.	2
ED_CRTDDATE	Date File was created. Format: MM/DD/YYYY	2
ED_CRTDTIME	Time File Created	2
E_MD5Hash	Program generated unique document identifier	2
E_OCR Flag	A yes/no field; populated with yes if the file contains Optical Character Recognition "OCR"	2

EXHIBIT C

1 Eric R. Draluck
Eric R. Draluck, Attorney at Law
2 P.O. Box 11647
Bainbridge Island, WA 98110
3 Phone: (206) 605-1424
Email: EDraluck@gmail.com

4 Eric J. Menhart (*Admitted Pro Hac Vice*)
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5 316 F Street NE, Suite 101
6 Washington, DC 20002
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7 Fax: (855) 453-9376
Eric.Menhart@Lexero.com

8 Attorneys for Defendants
9

10 **UNITED STATES DISTRICT COURT**
11 **WESTERN DISTRICT OF WASHINGTON**

12 AMAZON.COM, INC., *et al.*,
13 Plaintiffs,

14 v.

15 NGULLEN ALEJANDRO RIVERA, *et*
16 *al.*,
17 Defendants.

Case No: 2:18-cv-00350-RSM

**DEFENDANTS' RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

1 Defendants, pursuant to Rule 33 of the Federal Rules of Civil Procedure,
2 hereby sets forth the following responses and objections to Plaintiff's First Set of
3 Interrogatories.

4 **GENERAL OBJECTIONS & RESERVATION OF RIGHTS**

5 Respondent reserves all objections to the admissibility of any documents or
6 materials produced in response to these requests. Respondent objects to the
7 Interrogatories on the following grounds:

- 8 1. Where the Interrogatories seek private or confidential information.
- 9 2. Where the Interrogatories seek information that is not relevant to the dispute.
- 10 3. Where the Interrogatories seek information that is overbroad or unduly
11 burdensome.
- 12 4. Where the Interrogatories seek information that is privileged, attorney work-
13 product, or otherwise subject to an applicable privilege or privacy right.
14 Inadvertent disclosure of any information or documents shall not be a waiver
15 of any claim of privilege, work-product protection, or any other exemption.
- 16 5. Where the Interrogatories seek information that is publicly available or
17 otherwise available from other sources.
- 18 6. Where the Interrogatories are otherwise inconsistent with the Federal Rules
19 of Civil Procedure.

20 **INTERROGATORIES**

21 **INTERROGATORY NO. 1:** Identify each person who provided information
22 used in answering and responding to these Discovery Requests, and state the
23 information provided by that person.
24

- Liquidator Warehouse, 2420 West 80th Street #5, Hialeah, FL 33016
Phone: 305-363-6810; LiquidatorWarehouse.com

* * *

INTERROGATORY NO. 3: Identify each email account you have used to communicate about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.

RESPONSE: Objection. This request is not narrowly tailored to the allegations of the Complaint. Defendants could, if appropriate to do so, identify specific, existing, relevant communications without providing irrelevant information that this interrogatory seeks. Defendant declines to provide additional information at this time.

* * *

INTERROGATORY NO. 4: Identify each phone number (by carrier and number) you have used to communicate about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.

RESPONSE: Objection. This request is not narrowly tailored to the allegations of the Complaint. Defendants could, if appropriate to do so, identify specific relevant communications without providing irrelevant information sought in this request. Defendant declines to provide additional information at this time.

* * *

INTERROGATORY NO. 5: Identify each business entity owned or controlled by you, whether in whole or in part, directly or indirectly, and describe

1 each entity's involvement, if any, in the advertising, marketing, sale, and/or
2 distribution of products on Amazon's website during the last five years.

3 **RESPONSE:** Objection. This request is not narrowly tailored to the
4 allegations of the Complaint. Notwithstanding the foregoing, Defendants respond
5 as follows: NGS ICommerce Enterprises Corp.

6 * * *

7 **INTERROGATORY NO. 6:** For each business entity identified in your
8 Answer to Interrogatory No. 5, identify all of that entity's owners (by overall
9 share), managers and employees during the last five years.

10 **RESPONSE:** Ngullen Alejandro Rivera is the primary owner. Defendants
11 will advise if there is any known record of any other owner.

12 * * *

13 **INTERROGATORY NO. 7:** For each business entity identified in your
14 Answer to Interrogatory No. 5, identify each physical location (e.g., street
15 address) owned, rented, leased or otherwise occupied for the purpose of
16 conducting that entity's business operations.

17 **RESPONSE:** The business lists 15438 SW 147th Street, Miami, Fl, 33196
18 and 4120 SW 194th Terrace Miramar, Fl 33029 its only address in its corporate
19 filings.

20 * * *

21 **INTERROGATORY NO. 8:** Identify each Amazon Seller Account (by
22 account name and seller ID) you have ever used, accessed, owned, or otherwise
23 controlled.
24

RESPONSE: Objection. This request is not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendant advises that it may supplement this response after further research.

* * *

INTERROGATORY NO. 9: Identify each person who created, used, or accessed the Cases & More account, including the person's full name, employer, job title, and contact information.

RESPONSE: Objection. This request is not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendant advises that it may supplement this response after further research.

* * *

INTERROGATORY NO. 10: Identify each website you use or have ever used to advertise, market, sell, and/or distribute Otter Products Cases or Counterfeit Otter Products Cases.

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Notwithstanding the foregoing, Defendant advises that it may supplement this response after further research.

* * *

INTERROGATORY NO. 11: Identify each acquisition by you of Otter Products Cases or Counterfeit Otter Products Cases during the last five years, including without limitation the full names, addresses, and contact information of the person(s) from whom they were acquired; the date(s) they were acquired;

1 the items acquired; the quantity acquired; the price paid; and the serial numbers
2 or other identifying information associated with the acquisition.

3 **RESPONSE:** Objection. This request assumes that Defendants acquired
4 “counterfeit” product cases. Defendants deny the same. Moreover, this request is
5 not narrowly tailored to the allegations of the Complaint. Moreover, even if this
6 request were narrowly tailored, Defendants would certainly not have all data and
7 materials requested. Notwithstanding the foregoing, Defendant refers to its
8 Response to Interrogatory #2. Defendant also advises that it may supplement this
9 response after further research.

10 * * *

11 **INTERROGATORY NO. 12:** Identify each sale by you of Otter Products
12 Cases or Counterfeit Otter Products Cases during the last five years, including
13 without limitation the full names, addresses, and contact information of the
14 person(s) to whom they were sold; the date(s) they were sold; the items sold; the
15 quantity sold; the price at which they were sold; the ASIN under which they were
16 sold; the order numbers; and the serial numbers or other identifying information
17 associated with the sale.

18 **RESPONSE:** Objection. This request assumes that Defendants sold
19 “counterfeit” product cases. Defendants deny the same. Moreover, the
20 information sought by Plaintiff is equally as available to Plaintiff as from
21 Defendants.

22 * * *

23 **INTERROGATORY NO. 13:** Identify all Otter Products Cases or
24 Counterfeit Otter Products Cases which remain in your possession or control,

1 including their current physical location, items, quantity, and serial numbers or
2 other identifying information.

3 **RESPONSE:** Objection. This request assumes that Defendants have
4 possession or control of “counterfeit” product cases. Defendants deny the same.
5 Notwithstanding the foregoing, Defendants do not have any Otter Products cases,
6 counterfeit or otherwise, in their possession.

7 * * *

8 **INTERROGATORY NO. 14:** Identify each complaint received by you
9 about any Otter Products Cases or Counterfeit Otter Products Cases you sold
10 during the last five years, including without limitation the full names, addresses,
11 and contact information of the person(s) making the complaint; the date(s) of the
12 complaint; the substance of the complaint; your response to the complaint (if any);
13 and all information about the item(s) which are the subject of the complaint,
14 including the date the item was sold, quantity, price, ASIN, order numbers, and
15 serial numbers or other identifying information associated with the sale.

16 **RESPONSE:** Objection. This request is not narrowly tailored to the
17 allegations of the Complaint. This request assumes that Defendants manufactured
18 or sold “counterfeit” product cases. Defendants deny the same. Notwithstanding
19 the foregoing, Defendants advise that no such complaints exist.

20 * * *

21 **INTERROGATORY NO. 15:** Identify each financial account (by
22 institution, account number and account owner) into which you have received,
23 deposited, or transferred any funds derived from the manufacture or sale of Otter
24 Products Cases or Counterfeit Otter Products Cases during the last five years.

1 regulatory enforcement actions or investigations, including any request from a
 2 State Attorney General's office, to which you have been a party or provided
 3 testimony or evidence during the last ten (10) years involving the advertising,
 4 marketing, sale, distribution, import, and/or manufacture of an allegedly
 5 counterfeit, unlicensed or non-genuine product. Include in your description (i)
 6 the parties to the lawsuit, (ii) the court, (iii) the caption and case number, (iv) the
 7 nature of the claims asserted, and (v) the resolution of the case (i.e., still pending,
 8 verdict, judgment granted, etc. or its current procedural stage).

9 **RESPONSE:** Objection. This request is overbroad, unduly burdensome,
 10 and not narrowly tailored to the allegations of the Complaint. Defendants decline
 11 to respond to this request.

12 * * *

13 Respectfully submitted,

14 /s/ Eric J. Menhart

15 Eric J. Menhart, Esq. *

16 * *Admitted Pro Hac Vice*

17 /s/ Eric R. Draluck

18 Eric R. Draluck, Esq.

19 *Attorney to be Noticed*

20 **CERTIFICATE OF SERVICE**

21 I hereby certify that, on June 25, 2018, a copy of the foregoing was served
 22 via email upon Plaintiff's counsel:

23 Bonnie E. MacNaughton
 DAVIS WRIGHT TREMAINE LLP
 1201 Third Avenue, Suite 2200
 Seattle, Washington 98101-3045

24 /s/ Eric J. Menhart

Eric J. Menhart, Esq. *
* *Admitted Pro Hac Vice*

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EXHIBIT D

Eric R. Draluck
Eric R. Draluck, Attorney at Law
P.O. Box 11647
Bainbridge Island, WA 98110
Phone: (206) 605-1424
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Eric.Menhart@Lexero.com

Attorneys for Defendants

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

AMAZON.COM, INC., *et al.*,

Plaintiffs,

v.

NGULLEN ALEJANDRO RIVERA, *et al.*,

Defendants.

Case No: 2:18-cv-00350-RSM

**DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST REQUESTS
FOR PRODUCTION**

REQUEST FOR PRODUCTION NO. 1: Produce all documents reviewed, referred to, or relied upon in preparing your responses to any of these Discovery Requests.

ANSWER: Defendant intends to produce any existing non-privileged documents that are responsive to this request and within its custody or control.

* * *

REQUEST FOR PRODUCTION NO. 2: Produce all communications with each person identified in your Answer to Interrogatory No. 2 relating to Otter Products Cases or Counterfeit Otter Products Cases.

ANSWER: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Moreover, the request for “all” communications is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint. Documents responsive to this request are being withheld.

* * *

REQUEST FOR PRODUCTION NO. 3: Produce all communications relating to Otter Products Cases or Counterfeit Otter Products Cases from the email account(s) identified in your Answer to Interrogatory No. 3.

ANSWER: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Moreover, the request for “all” communications from certain email accounts is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint. Documents responsive to this request are being withheld.

* * *

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Moreover, the request for “all” communications from certain email accounts is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendants intend to produce certain existing non-privileged documents that are responsive to this request and within their custody or control.

* * *

REQUEST FOR PRODUCTION NO. 5: Produce all documents and communications concerning the establishment, formation, registration, and ownership of any entity identified in response to the Interrogatory No. 5, including without limitation (a) articles of incorporation, bylaws, and any other formational or organizational documents; (b) communications with any government agency regarding formation or registration; and (c) documents reflecting shares issued, owners, and ownership interests held.

RESPONSE: Objection. This request is not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendants intend to produce existing non-privileged documents that are responsive to this request and within their custody or control.

* * *

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Moreover, the request is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendants intend to produce existing non-privileged documents that are responsive to this request and within their custody or control.

* * *

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Notwithstanding the foregoing, Defendants intend to produce existing non-privileged documents that are responsive to this request and within their custody or control.

* * *

REQUEST FOR PRODUCTION NO. 8: Produce all policies, procedures, training manuals, or other documents in effect at any time during the last five years, that govern or governed your acquisition, advertising, marketing, sale, distribution, import, and/or manufacture of Otter Products Cases or Counterfeit Otter Products Cases, including without limitation all policies, procedures, training manuals, or other documents whose purpose or effect is to ensure the products you acquired bearing OTTERBOX Trademarks were properly manufactured by, or licensed for manufacture by, Otter Products.

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same. Moreover, the request is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint. Notwithstanding the foregoing, Defendants intend to produce existing non-privileged documents that are responsive to this request and within their custody or control.

* * *

REQUEST FOR PRODUCTION NO. 9: Produce all documents—including without limitation contracts, agreements, licenses, invoices, bills, purchase orders, receipts, shipping manifests, payments, internal notes, and correspondence between you and any person—that show, refer, relate to, or memorialize, any sale by you of Otter Products Cases or Counterfeit Otter Products Cases during the last five years.

RESPONSE: Objection. This request assumes that Defendants imported or distributed “counterfeit” product cases. Defendants deny the same.

Notwithstanding the foregoing, Defendants intend to produce existing non-

1 privileged documents that are responsive to this request and within their custody
2 or control.

3 * * *

4 **REQUEST FOR PRODUCTION NO. 10:** Produce all documents—
5 including without limitation contracts, agreements, licenses, invoices, bills,
6 purchase orders, receipts, shipping manifests, payments, internal notes, and
7 correspondence between you and any person—that show, refer, relate to, or
8 memorialize, any complaint you received relating to Otter Products Cases or
9 Counterfeit Otter Products Cases you sold during the last five years.

10 **RESPONSE:** Objection. This request assumes that Defendants
11 imported or distributed “counterfeit” product cases. Defendants deny the same.
12 Moreover, the request is overbroad, unduly burdensome, and not narrowly
13 tailored to the allegations of the Complaint. Notwithstanding the foregoing,
14 Defendants intend to produce existing non-privileged documents that are
15 responsive to this request and within their custody or control.

16 * * *

17 **REQUEST FOR PRODUCTION NO. 11:** Produce all periodic
18 statements during the last five years from any Financial Account into which any
19 proceeds from the sale of Otter Products Cases or Counterfeit Otter Products
20 Cases were deposited, including without limitation documents sufficient to show
21 each account’s balance, balance history, deposits, transfers, withdrawals, and
22 checks or wire payments drawn on or deposited to the account.

23 **RESPONSE:** Objection. This request assumes that Defendants imported or
24 distributed “counterfeit” product cases. Defendants deny the same. Moreover, the

1 request for financial documents is overbroad, unduly burdensome, and not
2 narrowly tailored to the allegations of the Complaint. Documents responsive to
3 this request are being withheld.

4 * * *

5 **REQUEST FOR PRODUCTION NO. 12:** Produce all documents and
6 communications relating to Cases & More.

7 **RESPONSE:** Objection. This request for documents and communications
8 is overbroad, unduly burdensome, and not narrowly tailored to the allegations of
9 the Complaint. Documents responsive to this request are being withheld.

10 * * *

11 **REQUEST FOR PRODUCTION NO. 13:** Produce all documents and
12 communications relating to any Amazon Seller Account through which you have
13 marketed or sold Otter Products Cases or Counterfeit Otter Products Cases during
14 the last five years.

15 **RESPONSE:** Objection. This request assumes that Defendants marketed or
16 sold “counterfeit” product cases. Defendants deny the same. Moreover, the request
17 for documents and communications is overbroad, unduly burdensome, and not
18 narrowly tailored to the allegations of the Complaint. Documents responsive to this
19 request are being withheld.

20 * * *

21 **REQUEST FOR PRODUCTION NO. 14:** Produce all communications
22 with Amazon during the last five years relating to any aspect of your sale of goods
23 on Amazon.com.

1 non-privileged documents that are responsive to this request and within their
2 custody or control.

3 * * *

4 **REQUEST FOR PRODUCTION NO. 18:** Produce all marketing materials
5 (whether in hard copy or electronic form) you created during the last five years
6 using OTTERBOX Trademarks, or that in any way reference Otter Products Cases
7 or Counterfeit Otter Products Cases.

8 **RESPONSE:** Objection. This request assumes that Defendants marketed or
9 sold “counterfeit” product cases. Defendants deny the same. Notwithstanding the
10 foregoing, Defendants intend to produce existing non-privileged documents that
11 are responsive to this request and within their custody or control.

12 * * *

13 **REQUEST FOR PRODUCTION NO. 19:** Produce all documents and
14 communications relating to the following Amazon orders:

- 15 a. Order ID 109-8189493-4792259 on July 23, 2015.
- 16 b. Order ID 109-7490388-0111419 on November 10, 2015.
- 17 c. Order ID 112-1568304-2261825 on December 24, 2015.
- 18 d. Order ID 112-5240300-2574610 on January 23, 2016.
- 19 e. Order ID 105-1725172-5037854 on February 27, 2016.
- 20 f. Order ID 106-9842401-5951416 on July 13, 2016.
- 21 g. Order ID 112-0354794-6716238 on July 14, 2016.
- 22 h. Order ID 110-6184376-6789009 on July 16, 2016.
- 23 i. Order ID 103-3540312-0997853 on July 27, 2016.

* * *

RESPONSE: No such documents exist.

* * *

RESPONSE: Objection. This request is overbroad, unduly burdensome, and narrowly tailored to the allegations of the Complaint. Moreover, the request is completely irrelevant. Documents responsive to this request are being withheld.

* * *

RESPONSE: Defendants intend to produce existing non-privileged

* * *

1 Respectfully submitted,

2 /s/ Eric J. Menhart

3 Eric J. Menhart, Esq. *

4 * *Admitted Pro Hac Vice*

5 /s/ Eric R. Draluck

6 Eric R. Draluck, Esq.

7 *Attorney to be Noticed*

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that, on June 25, 2018, a copy of the foregoing was served
10 via email and first-class mail upon Plaintiff's counsel:

11 Bonnie E. MacNaughton
12 DAVIS WRIGHT TREMAINE LLP
13 1201 Third Avenue, Suite 2200
14 Seattle, Washington 98101-3045

15 /s/ Eric J. Menhart

16 Eric J. Menhart, Esq. *

17 * *Admitted Pro Hac Vice*

EXHIBIT E

From: Wendell, Jamie
Sent: Tuesday, July 03, 2018 4:22 PM
To: eric.menhart@lexero.com; p17a433@lexero.com
Cc: Eric R. Draluck (edraluck@gmail.com); MacNaughton, Bonnie
Subject: RE: Amazon v. Rivera - Answer

Hi Eric,

We appreciate your answer and discovery responses.

Please let us know when we can expect defendants' document production.

Thanks,

Jamie

Jamie Wendell | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8350 | Fax: (206) 757-7350
Email: jamiewendell@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Shanghai | Washington, D.C.

EXHIBIT F

From: Wendell, Jamie
Sent: Monday, July 09, 2018 6:18 PM
To: eric.menhart@lexero.com; p17a433@lexero.com
Cc: Eric R. Draluck (edraluck@gmail.com); MacNaughton, Bonnie
Subject: RE: Amazon v. Rivera - Answer

Hi Eric,

Do you have availability for a call on Wednesday (7/11)? I'm generally available so please let me know what time works best for you.

In addition to the topics you would like to discuss, please be prepared to discuss the status of Defendants' search for responsive documents. Defendants' production last week contained nine documents total, with six of them being publically available corporate filings. Of the other three documents, only one of them appears to have any potential relevance. Among other things, we would like to understand the date by which Defendants' expect to complete their production.

Regards,

Jamie

Jamie Wendell | Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200 | Seattle, WA 98101

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Email: jamiewendell@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Shanghai | Washington, D.C.

EXHIBIT G



Suite 2200
1201 Third Avenue
Seattle, WA 98101-3045
(206) 622-3150 tel.
(206) 757-7700 fax

Bonnie MacNaughton
BonnieMacNaughton@dwt.com

James H. Wendell
JamieWendell@dwt.com

July 18, 2018

VIA EMAIL

Eric J. Menhart
Eric R. Draluck
Lexero Law
316 F Street NE, Suite 101
Washington, DC 20002
(855) 453-9376

Re: *Amazon.com, Inc. and Otter Products LLC v. Ngullen Alejandro Rivera, et al.*, No. 2:18-cv-00350-RSM

Counsel:

We write to raise a number of issues with Defendants' Answer and Defendant Rivera's responses to Plaintiff Amazon's First Set of Interrogatories and Requests for Production ("Discovery Requests"). We thank you in advance for your prompt attention to these issues.

Defendants' Answer

Amazon and Otter Products agreed to provide Defendants an additional thirty days (through May 7, 2018) to file an answer to the complaint. That date came and went without any answer. On June 7, 2018, I notified you via email that Plaintiffs would move for entry of default if Defendants did not answer the complaint by June 25, 2018.

On that day, Defendants filed a joint answer to Plaintiffs' complaint, but that answer is insufficient. For every factual allegation in the complaint, Defendants answered that they are "without knowledge or information sufficient to form a belief as to the truth of the allegations." While this may be an appropriate answer in limited situations, Defendants' blanket use of this answer is improper. For example, Defendants' Answer claims they are "without knowledge or information" in order to answer whether Plaintiffs correctly identified their names and residences. Compl. ¶¶ 6, 7. Defendants also claimed a lack of knowledge to be able to answer whether they operated the Amazon seller account at issue (*id.* ¶ 27) or entered into the BSA (*id.* ¶ 31). Defendants' refusal to answer these allegations serves only to increase the discovery costs in this case. **Please file an amended answer fully responding to each factual allegation in the complaint.**

July 18, 2018

Page 2

Requests for Production Deficiencies

Requests for Production Nos. 1, 4–10, 17, 18, and 22 — Amazon served the Discovery Requests on May 22, 2018, and Mr. Rivera’s responses were due on June 25. On that day, we received Mr. Rivera’s written responses indicating he agreed to provide documents in response to half of Amazon’s 22 Requests for Production (Nos. 1, 4–10, 17, 18, and 22), but we did not receive any documents.

On July 5, Mr. Rivera produced nine documents. All but three of these documents were public corporate filings for NGS ICommerce Enterprises Corp., including its articles of incorporation and annual reports. Of the three other documents Mr. Rivera produced, two of them are invoices from Merchandize Liquidators for purchases by NGS ICommerce and “NJW iRetails LLC” of apparently irrelevant merchandise (*i.e.*, not Otter Products Cases or Counterfeit Otter Products Cases). The only non-public document that is even potentially relevant is an invoice from “Gold Gain Intl Group Limited” for Mr. Rivera’s apparent purchase of 160 blue “Otterbox Defender” cases for iPhone 5. This production is insufficient to satisfy even the limited set of responsive documents which Mr. Rivera agreed to provide.

In his initial disclosures, Mr. Rivera expressly represented that he had a number of documents within his possession, custody or control. The documents Mr. Rivera identified included “Documents containing general information about the business operations of Defendants’ business,” “Documents related to Defendants’ sale of goods,” “Various contracts and communications with third parties related to the sale of goods,” and “E-mail, facsimile, and/or other communications related to the sale of goods.” All of these documents would be responsive to Amazon’s Discovery Requests. To date, we have not received any of these documents.

Please provide all documents responsive to Amazon’s Requests for Production Nos. 1, 4–10, 17, 18, and 22 by July 31, 2018.

Document Production Format — Although the Discovery Requests instructed Mr. Rivera to “mark each page or sheet ... with an identification of the defendant and consecutive document control (Bates) numbers,” the documents in Mr. Rivera’s initial production are not marked. This will impede the parties’ communications in this case by making it difficult to refer to individual pages. **Please produce all documents in this case in accordance with Amazon’s instructions.**

Requests for Production Nos. 2, 3, 11–13, and 21 — These requests seek documents and communications relating to Otter Products cases, counterfeit Otter Products cases, Mr. Rivera’s Amazon seller accounts, certain of Mr. Rivera’s financial accounts, and notices relating to infringement or authenticity of goods Mr. Rivera has received. Mr. Rivera acknowledged that he has documents responsive to these requests, but is withholding them based on his objection that the requests are “overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” As explained below, Mr. Rivera’s objections are meritless, and Amazon has a

July 18, 2018

Page 3

right to discover information relating to these requests. **Please provide all documents responsive to Requests for Production Nos. 2, 3, 11–13, and 21 by July 31, 2018.**

- Requests for Production Nos. 2 and 3 seek all communications “relating to Otter Products Cases or Counterfeit Otter Products Cases.” Mr. Rivera objected to both requests, stating that they are “overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” This objection is baseless. These requests target communications relating to the core issue in this case: Mr. Rivera’s sale of Otter Products Cases. Further, Mr. Rivera agreed to produce documents responsive to Requests for Production Nos. 4 and 7, which seek certain communications and text and voice messages relating to the same subject. There is no basis to distinguish the discoverability of, or burden of producing, the communications withheld for Requests for Production Nos. 2 and 3, from the communications Mr. Rivera agreed to produce in response to Requests for Production Nos. 4 and 7.
- Request for Production No. 11 seeks “all periodic statements during the last five years from any Financial Account into which any proceeds from the sale of Otter Products Cases or Counterfeit Otter Products Cases were deposited.” Mr. Rivera, however, objected to this Request because it is “overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” To the contrary, this request is narrowly tailored to seek information only from those accounts containing proceeds from the sale of the very cases at issue in this proceeding for a limited time period. Amazon is entitled to inquire into Defendants’ revenue and profit earned from the sale of Otter Products Cases because such information is highly relevant to both liability and damages in this matter.
- Requests for Production Nos. 12 and 13 seek documents and communications relating to Mr. Rivera’s Amazon seller account Cases & More LLC and any other Amazon Seller Account through which Mr. Rivera or his businesses marketed or sold Otter Products Cases or Counterfeit Otter Products Cases during the last five years. Mr. Rivera states that he is withholding documents because the requests are “overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” Mr. Rivera’s objections are without merit. These requests are narrowly tailored to seek information about only the Amazon Seller Accounts relevant to the issues in this proceeding, and are temporally limited.
- Request for Production No. 21 seeks “all notices ... relating to the infringement or authenticity of any goods sold by you during the last five years.” Mr. Rivera objected that this request is overbroad, unduly burdensome, and not narrowly tailored, and additionally that the request is “completely irrelevant.” Amazon disagrees. There is no basis to find any undue burden on Mr. Rivera, and the request is narrowly tailored to seek

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information only for a limited time period. Further, the request is relevant because any responsive documents are expected to show Mr. Rivera and his businesses' knowledge of the authenticity of the products they purchased and sold, including other counterfeit products they acquired from the sources that provided them with Counterfeit Otter Products Cases, and other counterfeit products they marketed and sold on Amazon's website in breach of Amazon's Business Solutions Agreement. Mr. Rivera's knowledge, of course, is highly relevant to a damages award in this case.

Requests for Production Nos. 14–16 and 19 — These requests relate to communications with Amazon and Otter Products during the last five years, agreements with Amazon in effect during the last five years, and documents and communications relating to nine specific Amazon orders. Mr. Rivera objected to these requests as “overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint” and responded that “the documents being requested are already in the possession of the Plaintiff.” As explained below, Mr. Rivera's objections are meritless, and Amazon has a right to discover information relating to these requests. Additionally, without Mr. Rivera's production or even identification of these documents, Amazon does not know whether the documents are, in fact, in its possession. Nor has Mr. Rivera provided any legal support for the proposition that a party can ignore its obligation to produce responsive documents by claiming the other party already possesses the documents, without even identifying the documents allegedly possessed. **Please provide all documents responsive to Requests for Production Nos. 14–16 and 19 by July 31, 2018.**

- Requests for Production Nos. 14–16 seek all communications with Amazon and Otter Products, and all agreements in effect with Amazon, during the last five years. Among other concerns, Amazon does not know all of the e-mail addresses, phone numbers, Amazon Seller Accounts, and other communication methods that Mr. Rivera and his businesses used to communicate with Amazon and Otter Products during the last 5 years and therefore cannot determine which documents are allegedly in Amazon's possession that are responsive to these requests.
- Request for Production No. 19 seeks all documents and communications related to nine specific Amazon orders, which represent some of Defendants' transactions involving the sale of Counterfeit Otter Products Cases. Even if some of the documents may be in Amazon's possession, others are not—such as communications by Mr. Rivera and his businesses outside of Amazon's website relating to these transactions, and documents showing how they acquired the cases that were the subject of the transactions.

Interrogatories Deficiencies

Verification Signature — Pursuant to Rule 33(b)(5), **please promptly provide a verification signature for Mr. Rivera's answers to Amazon's First Set of Interrogatories.**

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Interrogatory No. 2 — This Interrogatory asks Mr. Rivera to identify “each person with whom you have communicated about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.” Notably, Mr. Rivera’s answer does not include “Gold Gain Intl Group Limited”—even though Mr. Rivera produced an invoice from “Gold Gain Intl Group Limited” showing his apparent acquisition of 160 “Otterbox Defender” cases from this entity. It is critical for Amazon to have a full and complete answer to this Interrogatory in order to account for the sources of all of the cases which were acquired by Mr. Rivera and his businesses, and to confirm Amazon’s allegations that Defendants were not licensed or authorized to market and sell these cases. **Please supplement Mr. Rivera’s answer to Interrogatory No. 2 to provide a full and complete response.**

Interrogatories Nos. 3, 4, 15, 17, and 18 — Among other things, these Interrogatories ask Mr. Rivera to identify certain email accounts, financial accounts, and phone numbers; profits; and other proceedings involving counterfeit products. In each of his Answers, Mr. Rivera “declined” to answer the Interrogatory, sometimes without even asserting an objection. As explained below, Amazon is entitled to the information sought in these interrogatories. **Please supplement Mr. Rivera’s answers to Interrogatories Nos. 3, 4, 15, 17, and 18 to provide a full and complete response.**

- Interrogatories Nos. 3 and 4 ask Mr. Rivera to identify “each email account” and “each phone number” “you have used to communicate about the acquisition, marketing, sale, manufacture, import or distribution of Otter Products Cases or Counterfeit Otter Products Cases.” Mr. Rivera’s objection is that these interrogatories are “not narrowly tailored to the allegations of the Complaint.” Mr. Rivera also states that he “could, if appropriate to do so, identify specific, existing, relevant communications without providing irrelevant information that this interrogatory seeks.” There is nothing “irrelevant” about the information sought in these interrogatories, and identifying certain communications does not eliminate Mr. Rivera’s obligation to answer them. Amazon seeks basic information about the email addresses and phone number Mr. Rivera used to communicate about Otter Products cases. Mr. Rivera has no basis to withhold this information.
- Interrogatory No. 15 asks Mr. Rivera to identify “each financial account ... into which you have received, deposited, or transferred any funds derived from the manufacture or sale of Otter Products Cases or Counterfeit Otter Products Cases during the last five years.” Mr. Rivera objects that “the specific details of each financial account used by Defendants is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” But this Interrogatory is narrowly tailored to seek only the identity of accounts relevant to the cases at issue in this proceeding—not each financial account ever used by Mr. Rivera or his businesses. Amazon is entitled to the information regarding

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Mr. Rivera's financial accounts that were used in furtherance of his scheme to sell counterfeit Otter Products cases.

- Interrogatory No. 17 asks Mr. Rivera to identify “profits earned from the sale of Otter Products Cases or Counterfeit Otter Products Cases during the last five years, and describe the basis for and calculation method used to compute those profits.” Mr. Rivera objects that “[t]his request assumes that Defendants manufactured or sold ‘counterfeit’ product cases.” But that is false. The interrogatory specifically requests information about genuine and counterfeit cases to avoid the issue to which Mr. Rivera objects. The revenue and profits Mr. Rivera earned from the sale of Otter Products cases is discoverable and highly relevant.
- Interrogatory No. 18 asks Mr. Rivera to identify and describe, among other things, proceedings or investigations “to which you have been a party or provided testimony or evidence during the last ten (10) years” involving marketing or sales of allegedly counterfeit products. Mr. Rivera objects that “[t]his request is overbroad, unduly burdensome, and not narrowly tailored to the allegations of the Complaint.” But Mr. Rivera has not explained why providing this information would unduly burden him. Further, this Interrogatory is narrowly tailored to seek the identity of proceedings which may yield information as to, among other things, Mr. Rivera and his businesses’ knowledge about the authenticity of the cases that they sold.

Interrogatory No. 5 — This Interrogatory asks Mr. Rivera to identify “each business entity owned or controlled by you, whether in whole or in part, directly or indirectly, and describe each entity’s involvement, if any, in the advertising, marketing, sale, and/or distribution of products on Amazon’s website during the last five years.” In his answer, Mr. Rivera identified only one entity—NGS ICommerce—but did not describe this entity’s involvement with the activities on Amazon’s website. **Please provide this requested information.**

Further, Mr. Rivera’s answer did not identify NJW iRetails LLC even though Mr. Rivera produced an invoice directed to this entity, and public records list him as a manager of this entity. Contrary to Mr. Rivera’s objection that this Interrogatory “is not narrowly tailored to the allegations of the Complaint,” Amazon is entitled to know the identities of the entities Mr. Rivera used in the course of his infringing activities, and that Mr. Rivera may use in the future to attempt to create new Amazon Seller Accounts. **Please confirm Mr. Rivera does not own or control any entity besides NGS ICommerce. If he does, please supplement Mr. Rivera’s answer to Interrogatory No. 5 to provide a full and complete response.**

Interrogatories Nos. 6 and 7 — Among other things, these Interrogatories ask for information about the owners, managers and employees, and the physical locations, of each entity identified in Interrogatory No. 5. **For each additional entity provided by Mr. Rivera in his supplement**

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to Interrogatory No. 5, please supplement Mr. Rivera's answers to Interrogatories Nos. 6 and 7 to provide the requested information for the entity.

- Further, Mr. Rivera answered Interrogatory No. 6 by stating only that he is the “primary owner.” But this interrogatory sought all owners, not just the “primary” owner. Further, it sought all managers and employees during the last 5 years, none of whom Mr. Rivera provided. **Please confirm NGS ICommerce does not have any owners, managers, or employees other than Mr. Rivera.**
- Additionally, Mr. Rivera answered Interrogatory No. 7 by listing the addresses “in its corporate filings.” But that caveat means Mr. Rivera's answer is incomplete. He must answer the interrogatory regardless of whether the information is in the corporate filings. **Please confirm NGS ICommerce did not own, rent, lease, or otherwise occupy any other physical location for its business operations.**

Interrogatories Nos. 8–11 — Among other things, these Interrogatories ask Mr. Rivera to identify each Amazon Seller Account used by him or his businesses, each person who used the Cases & More account, each website Mr. Rivera or his businesses used to market Otter Products Cases or Counterfeit Otter Products cases, and each acquisition of these cases. Mr. Rivera did not provide any substantive answers to these interrogatories—only that he “may supplement this response after further research.” This is plainly insufficient. The subjects of these Interrogatories are at the core of Amazon's allegations, and Amazon is entitled to this information so it can fully prosecute its claims. **Please supplement Mr. Rivera's answers to Interrogatories Nos. 8-11 to provide a full and complete response.**

Interrogatories Nos. 12 and 16 — Among other things, these Interrogatories ask Mr. Rivera to identify each sale of Otter Products Cases or Counterfeit Otter Products cases, and the total sales dollar amount (including calculation method) for these cases. Mr. Rivera answered “[t]he information sought by Plaintiff is equally as available to Plaintiff as from Defendants.” There are numerous problems with this answer. Procedurally, Mr. Rivera provides no support for the proposition that he may avoid answering an interrogatory solely because information may be in the requesting parties' possession. Factually, Mr. Rivera's answer is false. Mr. Rivera has refused to identify the Amazon Seller Accounts used to sell the cases, so Amazon cannot gather this information. Further, Mr. Rivera has refused to identify any other websites used to sell the cases, or to confirm that no other websites were used. To the extent Mr. Rivera sold cases through any other platform besides Amazon, Amazon would not have that information. **Please supplement Mr. Rivera's answers to Interrogatories 12 and 16 to provide a full and complete response.**

Interrogatory No. 13 — Among other things, this Interrogatory asks Mr. Rivera to “[i]dentify all Otter Products Cases or Counterfeit Otter Products Cases which remain in your possession or

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control.” Mr. Rivera answered, “Defendants do not have any Otter Products cases, counterfeit or otherwise, *in their possession*” (emphasis added). **Please confirm that Mr. Rivera and his businesses also do not have any Otter Products Cases or Counterfeit Otter Products Cases in their control.**

Please let us know if you would like to discuss any of these issues further.

Sincerely,

Davis Wright Tremaine LLP

A handwritten signature in blue ink, appearing to read "Bonnie MacNaughton".

Bonnie MacNaughton

James H. Wendell

EXHIBIT H

From: Wendell, Jamie
Sent: Wednesday, August 01, 2018 2:50 PM
To: Eric Menhart; Eric R. Draluck (edraluck@gmail.com)
Cc: MacNaughton, Bonnie; Chung, Jennifer
Subject: Amazon and Otter v. Rivera et al. - Request for Meet and Confer Pursuant to LCR 37(a)(1)
Attachments: Letter to Mr. Rivera Regarding Discovery Deficiencies.pdf

Counsel:

The attached discovery letter requested that Defendant Rivera remedy a number of deficiencies with his discovery responses by July 31. We have not received a response (let alone the requested discovery). We plan on moving to compel the production of this material, and will seek our attorneys' fees for doing so.

Pursuant to LCR 37(a)(1), we request your availability tomorrow or Friday to meet and confer regarding these issues.

Regards,

Jamie

Jamie Wendell | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8350 | Fax: (206) 757-7350
Email: jamiewendell@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | **Seattle** | Shanghai | Washington, D.C.

EXHIBIT I

From: Eric Menhart <eric.menhart@lexero.com>
Sent: Friday, August 10, 2018 4:26 PM
To: Wendell, Jamie
Cc: MacNaughton, Bonnie; Chung, Jennifer
Subject: RE: Amazon and Otter v. Rivera et al. - Request for Meet and Confer Pursuant to LCR 37(a)(1)

Counsel:

Per my VM of a few moments ago, I had positive conversations with my client this week, and I anticipate more documents being produced next week. Please give me a call next week and I can explain what I anticipate providing. Thank you.

Yours truly,

Eric Menhart, Esq.
Lexero Law Firm
316 F St NE, Suite 101, Washington, DC 20002
Phone: 855-4-LEXERO (855-453-9376) Ext. 101
Fax: 855-4-LEXERO (855-453-9376)
<http://www.Lexero.com>

EXHIBIT J

From: Wendell, Jamie
Sent: Friday, August 10, 2018 5:03 PM
To: eric.menhart@lexero.com; p17a433@lexero.com
Cc: MacNaughton, Bonnie; Chung, Jennifer
Subject: RE: Amazon and Otter v. Rivera et al. - Request for Meet and Confer Pursuant to LCR 37(a)(1)

Hi Eric,

We appreciate the effort to secure Mr. Rivera's cooperation. However, as we discussed, if we did not receive a substantial production of documents from Mr. Rivera by today, we would move forward with filing a motion to compel and seeking our fees for doing so. We have set multiple "deadlines" for Mr. Rivera's production of documents to no avail, and we cannot continue to wait for the documents. We are finalizing our motion as we speak and plan on filing early next week.

If Mr. Rivera provides supplemental responses and documents before the motion is on file, we will, of course, review the production to determine whether it addresses the issues in the motion. We have no intention or desire to engage in needless motion practice, or unnecessarily bring issues before the court. However, given Mr. Rivera's past conduct in this case, we have little choice but to move forward in this manner.

Please let me know if you want to discuss these issues further.

Regards,

Jamie

Jamie Wendell | Davis Wright Tremaine LLP

1201 Third Avenue, Suite 2200 | Seattle, WA 98101

Tel: (206) 757-8350 | Fax: (206) 757-7350

Email: jamiwendell@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | [Seattle](#) | Shanghai | Washington, D.C.

EXHIBIT K

From: Eric Menhart <eric.menhart@lexero.com>
Sent: Wednesday, August 15, 2018 4:53 PM
To: Wendell, Jamie
Cc: MacNaughton, Bonnie; Chung, Jennifer
Subject: RE: Amazon and Otter v. Rivera et al. - Request for Meet and Confer Pursuant to LCR 37(a)(1)

Counsel:

As I mentioned last week, I've had productive conversations with Mr. Rivera and am producing additional documents via the link below:

REDACTED

Please note that we are designating the wire transfer information, as confidential.

I anticipate issuing revised Interrogatory responses shortly and the client is undertaking to produce additional documents shortly. Thank you.

Yours truly,

Eric Menhart, Esq.
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